

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ANDREW C. HOOKE,	:	No. 4:CV-06-715
	:	
Petitioner	:	(Judge Jones)
	:	
v.	:	(Magistrate Judge Smyser)
	:	
COMMONWEALTH	:	
OF PENNSYLVANIA,	:	
	:	
Respondent.	:	

MEMORANDUM AND ORDER

May 3, 2006

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On April 5, 2006, the petitioner Andrew C. Hooke (“Petitioner” or “Hooke”) filed a Petition for Writ of Habeas Corpus (“the Petition”) pursuant to 28 U.S.C. § 2254. (See Rec. Doc. 1). The case was referred to Magistrate Judge J. Andrew Smyser for preliminary review.

On April 12, 2006, Magistrate Judge Smyser prepared a report recommending that the Petition be dismissed without prejudice on the basis that Petitioner has not exhausted his claims in state court. Objections to the report were due by April 28, 2006, and to date none have been filed.

STANDARD OF REVIEW:

When no objections are made to a magistrate's report, the district court is not statutorily required to review a magistrate judge's report before accepting it. See Thomas v. Arn, 474 U.S. 140, 149 (1985). According to the Third Circuit, however, "the better practice is to afford some level of review to dispositive legal issues raised by the report." Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987). When a district court accepts a magistrate judge's report, the report becomes the judgment of the court. Id.

DISCUSSION:

Our review of this case confirms the Magistrate Judge's determinations and although we have not been presented with any reason to revisit them, we will briefly reiterate the salient aspects of the Magistrate Judge's report and recommendation.

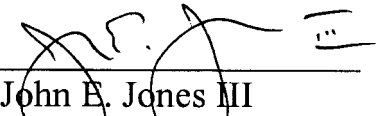
As the Magistrate Judge explained, Petitioner is challenging a conviction from the Court of Common Pleas of Cumberland County, Pennsylvania. Petitioner served twelve days and was subsequently released on probation. He appealed his conviction to the Superior Court of Pennsylvania, which affirmed his conviction on March 8, 2006; however, Petitioner did not seek further review by a higher court, he did not present the claims he is now raising to the Superior Court of

Pennsylvania on direct appeal, nor did he file a petition for collateral relief pursuant to Pennsylvania's Post Conviction Relief Act ("PCRA"). (Rep. & Rec. at 1-2). We are in agreement with the Magistrate Judge that Petitioner has failed to exhaust state court remedies prior to filing the instant Petition. Id. at 2-4; 42 Pa.C.S.A. § 9543(a)(1)(i). Accordingly, the Petition is dismissed without prejudice.

Because we find no error in Magistrate Judge Smyser's report and recommendation and, because no objections have been filed, we will adopt the report as our own.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Magistrate Judge Smyser's Report and Recommendation (doc. 2) is adopted in its entirety.
2. The Petition for Writ of Habeas Corpus (doc. 1) is dismissed without prejudice as Petitioner has not exhausted his claims in state court.
3. The Clerk shall close the file on this case.



John E. Jones III
United States District Judge